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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/885,485
Filing Date: June 20, 2001
Appellant(s):   GHOSH ET AL.

John C Pokotylo
(Registration No. 36,242)
For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed on July 10, 2006 appealing from the Office

Action mailed on November 30, 2005.

Application/Control Number: 09/885,485

REAL PARTY IN INTEREST

1.   The statement identifying the real party in interest is contained in the appeal brief (Juniper Networks).

RELATED APPEALS AND INTERFERENCES

2.   The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF THE CLAIMS

3.   The statement of the status of claims contained in the appeal brief is correct (Claims 1-5, 15-17, 19-20, 25, and 31-34 are rejected (on appeal), claims 21-24 and 35-40 are withdrawn, and claims 6-14, 18, and 26-30 are objected).

STATUS OF AMENDMENT

4.   The statement of the status of amendment contained in the appeal brief is correct. This is in response to the appeal brief filed on July 10, 2006 appealing from the Office Action (Final Rejection) mailed on November 30, 2005.

SUMMARY OF INVENTION

5.   The summary of claimed subject matter contained in the appeal brief is correct.

ISSUES

6.   The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

CLAIMS APPEALED

7.   The copy of the appealed claims contained in the Appendix to the appeal brief is correct.

PRIOR ART OF RECORD

8.   (a)   US Patent No. 6,745,243, published on June 01, 2004, filed on June 30, 1998 by Squire et al.

(b)   US Patent No. 6,771,637, published on August 03, 2004, filed on November 12, 1999 by Suzuki et al.

OBJECTIONS

9.   The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

10.   The abstract of the disclosure is objected to because the abstract does not contain proper content of an abstract of the disclosure and proper language and format for an abstract of the disclosure. Correction is required. See MPEP § 608.01(b).

GROUND OF REJECTION

CLAIM REJECTIONS - 35 USC § 102(e)

11.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12.   **Claims 1-3, 15-17, 19-20, 25, and 31-34 are rejected under 35 U.S.C. 102(e)**

as being anticipated by Squire et al (U.S. Patent No. 6,745,243).

Squire's patent meets all the limitations for the claims 1-3, 15-17, 19-20, 25,

and 31-34 recited in the claimed invention.

13.   As to claim 1, Squire et al teach a method for generating traffic information for

analysis (abstract; and figures 5-6), the method comprising: accepting at least one

sample (datagram) derived from addressed data (figures 2-3 and 6; column 6 lines

17-41; and column 9 lines 16-30); determining path-centric information (network session

information) based on the accepted at least one sample; and adjusting a traffic metric of

a traffic parameter (bandwidth, load balancing, and network traffic) based on the

determined path-centric information (figures 4 and 6; column 6 line 42 to column 7 line

8; and column 9 lines 31-57).

14.	As to claims 2-3, Squire et al teach that the addressed data is a packet; and the sample includes information from the header of a packet (figures 2-4; and column 5 line 61 to column 6 line 5).

15.	As to claim 15, Squire et al teach that the sample includes (parameters) a source address/port, a destination address/port, a protocol, and an interface number (figures 2-4; column 6 lines 17-62).

16.	As to claims 16-17, Squire et al teach that the path-centric information determined includes an origin autonomous system, a peer autonomous system, and an autonomous system path (figure 1; and column 4 line 13 to column 5 line 61).

17.	As to claim 19, Squire et al teach that the traffic metric adjusted is at least one of a byte count and a packet count (column 5 line 61 to column 6 line 5).

18.	As to claim 20, Squire et al teach that the traffic parameter is selected from a particular pair of source and destination addresses, a particular pair of source and destination ports, and a particular pair of autonomous systems (figures 2-4; column 6 lines 17-62).

19.   As to claims 25 and 31, they are also rejected for the same reasons set forth to

rejecting claims 1 and 20 above, since claims 25 and 31 are merely an apparatus for

the method of operation defined in the method claims 1 and 20.

20.   As to claim 32, it is also rejected for the same reasons set forth to rejecting

claims 1 and 25 above. Additionally, Squire et al disclose that a data forwarding device

comprising: an addressed data forwarding facility for forwarding addressed data based

on forwarding information (figures 4-5; and column 6 line 42 to column 8 line 34); and a

routing facility for determining and disseminating network state information, and for

generating path information based on the network state information (figures 5-6; and

column 8 line 52 to column 9 line 57).

21.   As to claims 33-34, Squire et al disclose that the routing facility affects an exterior

gateway protocol and a border gateway protocol (column 7 lines 18-22 and 38-46).

CLAIM REJECTIONS - 35 USC § 103(a)

22.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:
        (a) A patent may not be obtained though the invention is not identically disclosed
or described as set forth in section 102 of this title, if the differences between the
subject matter sought to be patented and the prior art are such that the subject matter
as a whole would have been obvious at the time the invention was made to a person
having ordinary skill in the art to which said subject matter pertains. Patentability shall
not be negatived by the manner in which the invention was made.
        This application currently names joint inventors. In considering patentability of
the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of
the various claims was commonly owned at the time any inventions covered therein
were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

23.   **Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Squire et al (U.S. Patent No. 6,745,243) in view of Suzuki et al (U.S. Patent No. 6,771,637).**

24.   As to claim 4, Squire et al do not teach that the act of determining path-centric information based on the accepted at least one sample includes using at least a part of the at least one sample as a search key to find an item with a closest matching key in a data structure.

Suzuki et al teach the act of determining path-centric information based on the accepted at least one sample includes using at least a part of the at least one sample as a search key to find an item with a closest matching key in a data structure (table) (figures 6 and 8; column 8 lines 45-53; column 10 line 41 to column 11 line 48; and column 16 lines 9-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Suzuki et al as stated above with the method of Squire et al for generating traffic information for analysis because it would have increased the transmission efficiency and internal processing speed to improved the network latency when a traffic intensity increases.

25.   As to claim 5, Suzuki et al teach that the data structure is a searchable data structure in a table form (figures 3-4; and column 8 lines 45-53), and a hash table, a binary search tree, and a trie are well-known in the art at the time the invention was made to use as data structure.

ALLOWABLE SUBJECT MATTER

26.   Claims 6-14, 18, and 26-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

27.   As to claims 6 and 26, the prior art of record does not teach or suggest or render obvious the act of/means for determining path-centric information based on the accepted at least one sample includes: using at least a part of the at least one sample as a search key to find a first item with a closest matching key in a first data structure; and using at least a part of the first item found as a search key to find a second item with a matching key in a second data structure.

As to claims 18 and 30, the prior art of record does not teach or suggest or render obvious the act of/means for adjusting a traffic metric of a traffic parameter based on the determined path-centric information includes: using a part of the determined path-centric information as a key to search items·of traffic parameters; and if a traffic parameter with a matching key is found, incrementing the traffic metric of the

traffic parameter; and if none of the traffic parameters has a matching key, creating a new item.

RESPONSE TO ARGUMENTS

28.   The examiner summarizes the various points raised by the appellant and addresses them individually.

29.   As per appellants' arguments filed on May 02, 2006, appellants argued in substance that:

(A)   Argument: Independent claims 1, 25, and 32 are not anticipated by the Squire patent because the Squire patent does not teach acts of (or means for) determining path-centric information based on the accepted sample(s); and adjusting a traffic metric of a traffic parameter based on the determined path-centric information.

Response: Squire patent teaches the acts of determining path-centric information (network session information) based on the accepted at least one sample; and adjusting a traffic metric of a traffic parameter (bandwidth, load balancing, and network traffic) based on the determined path-centric information (figures 4 and 6; column 6 line 42 to column 7 line 8; and column 9 lines 31-57), which implies that the network session information discussed in the Squire patent is functionally equivalent to the path-centric information as claimed.

(B) **Argument:** Dependent claims 16-17 are not anticipated by the Squire patent because the Squire patent does not teach or disclose the autonomous system.

Response: An Autonomous System is a collection of networks under a single administrative authority such as Internet Service Provider (ISP). Squire patent teaches a plurality of network devices connected with one or more networks and providing control and administrative services (figure 1; and column 4 line 61 to column 5 line 10), which implies that the Squire patent is functionally equivalent to the claimed invention of the claims 16-17; therefore the arguments with respect to claims 16-17 are not deemed to be persuasive and rejection of the claims 16-17 stands.

(C) **Argument:** Dependent claim 19 is not anticipated by the Squire patent because the Squire patent does not teach the traffic metric adjusted is at least one of a byte count and a packet count.

Response: Squire teaches that the traffic metric adjusted is at least one of a byte count and a packet count (the number of bytes of data contained within a packet is dependent upon the communication resources of the client, the origin server, and the network protocol employed, which is functionally equivalent to the claimed invention of the claim 19) (column 5 line 33 to column 6 line 5; figure 6; and column 9 lines 31-57).

(D) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., path-centric information might not be included in a packet (or addressed data)

sample, it might be determined from a packet (or addressed data) sample and adjusting

a traffic metric of a traffic parameter based on an origin AS and a peer AS) are not

recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re*

Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(E)   In response to applicant's arguments of claims 20 and 31, Squire et al explicitly

teach that the traffic parameter is selected from a particular pair of source and

destination addresses, a particular pair of source and destination ports, and a particular

pair of autonomous systems (figures 2-4; column 6 lines 17-62).

(F)   In response to applicant's argument that there is no suggestion to combine the

references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention

where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in

the art.   See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Squire does not teach that using at least a part of the at least one sample

as a search key to find an item with a closest matching key in a data structure. Suzuki et

al teach the act of determining path-centric information based on the accepted at least

one sample includes using at least a part of the at least one sample as a search key to

find an item with a closest matching key in a <u>data structure (table)</u> (figures 6 and 8; column 8 lines 45-53; column 10 line 41 to column 11 line 48; and column 16 lines 9-31); therefore, the combination of these two references is teaching the claimed invention and motivation to combine two references is follow.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Suzuki et al as stated above with the method of Squire et al for generating traffic information for analysis because it would have increased the transmission efficiency and internal processing speed to improved the network latency when a traffic intensity increases.

(G) In response to applicant's arguments of claims 20 and 31, Suzuki et al explicitly teach that the data structure is a searchable data structure in a table form (figures 3-4; and column 8 lines 45-53), and a hash table, a binary search tree, and a trie are well-known in the art at the time the invention was made to use as data structure.

30. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

BHARAT BAROT
PRIMARY EXAMINER

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Art Unit 2155

October 13, 2006

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